Chapter CXXVII

GENERAL PRINCIPLES AS TO VOTING.[1]

5925. The question is put first on the affirmative and then on the negative side.

Debate may continue, the previous question not having been ordered, until the Speaker has put the negative side of the question.

Chapter XXXIX of Jefferson's Manual provides:

The question is to be put first on the affirmative and then on the negative side.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the negative be put; because it is no full question till the negative part be put. (Scob., 23; 2 Hats., 73.)

But in small matters, and which are of course such as receiving petitions, reports, withdrawing motions, reading papers, etc., the Speaker most commonly supposes the consent of the House where no objection is expressed, and does not give them the trouble of putting the question formally. (Scob., 22; 2 Hats., 79, 2, 87; 5 Grey, 129; 9 Grey, 301.)

5926. On a vote the Speaker first decides by the sound, but if he or any Member is dissatisfied, a division by rising is had.

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[1] See also—

As to voting by tellers. (Secs. 5985–6002 of this volume.)

As to voting by ballot. (Secs. 6003–6010 of this volume.)

As to voting by yeas and nays. (Secs. 6011–6105 of this volume.)

As to division of the question. (Secs. 6106–6162 of this volume.)

[2] As to what constitutes a division. (Sec. 6447 of this volume.)

[3] Principle of disqualifying personal interest as applied to Senators sitting in an impeachment trial. (Sec. 2061 of Vol. III.)

[4] See section 6061 of this volume.

[5] Effect of votes on resolutions relating to the right of a Member to his seat. (Sec. 2588 of Vol. III.)

The voice of a majority decides on a vote, but if the House be equally divided the motion fails.

When a quorum fails on a division the matter continues in the exact state it was before the division.

Questions of order arising during a division are decided peremptorily by the Speaker.

Jefferson's Manual, in Section XLI, has the following general provisions in regard to voting:

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall rise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House.[1] (Scob.)

A mistake in the report of the tellers may be rectified after the report made.[2] (2 Hats., 145, note.)

But in both Houses of Congress all these intricacies are avoided. The ayes first rise and are counted standing in their places by the President or Speaker. Then they sit, and the noes rise and are counted in like manner.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House, if irregular. He sometimes permits old experienced Members to assist him with their advice, which they do sitting in their seats, covered,[3] to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. (2 Hats., 143.)

The voice of the majority decides, for the lex majoris partis is the law of all councils, elections, etc., where not otherwise expressly provided. (Hakew., 93.) But if the House be equally divided, semper presumatur pro negante—that is, the former law is not to be changed but by a majority. (Towns., col., 134.)

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. (2 Hats., 126.)

5927. The rules prescribe the form in which the Speaker shall put the question.—Section 5 of Rule I[4] provides as to the duty of the Speaker in case of a division:

He shall * * * put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; * * *

5928. A division having commenced, debate is thereby precluded.—On January 20, 1891,[5] the Speaker announced that the question was on the approval of the Journal, and the question being taken the Speaker said that the "ayes" seemed to have it.

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[1] Section 5 of Rule I has practically the same provisions. (See sec. 5927.)

[2] This refers more particularly to the English system of voting, where formerly one side of the question left the room, the tellers counting those remaining in their seats and those going out as they returned.

[3] This is the English custom. The rules of the House of Representatives expressly forbid the Member to wear his hat.

[4] For full form and history of this rule see section 1311 of Volume II this work.

[5] Second session Fifty-first Congress, Journal, p. 157; Record, p. 1568.

Mr. Roger Q. Mills, of Texas, demanded a division.

The Speaker having announced that a division was demanded, Mr. Mills demanded the opportunity to debate,

The Speaker [1] held that, a division having commenced, debate was thereby precluded.

5929. On March 2, 1904,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a vote was taken on an amendment proposed by Mr. William S. Cowherd, of Missouri.

The question was put by the Chairman, and a vote being taken viva voce, the Chairman announced that the amendment was agreed to.

Mr. James T. McCleary, of Minnesota, demanded a division, and the House proceeded to divide, when Mr. Elmer J. Burkett, of Nebraska, asked if the amendment might be debated.

The Chairman [3] said:

> No; not while the House is dividing. * * * The Chair had announced the vote, and now we are verifying the vote by arising vote. The yeas are 31 and the nays 26, and the amendment is agreed to.

5930. Having given his vote, a Member may not withdraw it without leave of the House.—On February 7, 1894,[4] the House having under consideration a resolution relating to Hawaiian affairs, at the conclusion of the roll call Mr. Silas Adams, of Kentucky, asked leave to withdraw his vote.

Mr. James B. McCreary, of Kentucky, objected.

Mr. Thomas B. Reed, of Maine, made the point that Mr. Adams, as a matter of right, could withdraw his vote.

The Speaker [5] held that inasmuch as the rules of the House require Members to vote, a Member having cast his vote could not withdraw it without leave of the House.[6]

5931. Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote.[7]—February 28, 1829,[8] the House having under consideration an act to compensate Susan Decatur, widow of Stephen Decatur, the previous question was moved and the yeas and nays ordered and taken.

The Speaker rose and announced that there were yeas 79, nays 81.

At this stage of the proceedings, and before the Speaker had pronounced the decision of the House, Mr. Mark Alexander, of Virginia, rose and announced his wish to change his vote from the negative to the affirmative side of the question.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-eighth Congress, Record, p. 2709.

[3] George P. Lawrence, of Massachusetts. Chairman.

[4] Second session Fifty-third Congress, Journal, p. 143: Record, p. 2003.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] On February 27, 1861 (second session Thirty-sixth Congress, Globe, p. 1264), Mr. Speaker Pennington permitted a Member to withdraw his vote, although objection was made. So, also, on June 1, 1882, Mr. Speaker Keifer held that a Member might withdraw his vote at the close of the roll call, even though objection be made. (First session Forty-seventh Congress, Record, p. 4445.)

[7] See also sections 6093, 6094 of this volume for additional precedents on this point. Also see sections 6082, 6083 of this volume.

[8] Second Session Twentieth Congress. Journal. pp. 357, 358.

The Speaker[1] decided that Mr. Alexander had a right to change his vote; and Mr. Alexander's vote being changed, the question stood—yeas 80, nays 80.

An equal division of the House being thereby produced, the Speaker voted with the yeas, and pronounced the question, Shall the main question be now put? to be passed in the affirmative.

And thereupon Mr. Joel B. Sutherland, of Pennsylvania, rose and made a question of order whether the Speaker possessed the power to permit a Member of the House to change his vote after the numbers of votes on each side of the question had been announced from the Chair.

The Speaker decided that it was the right of a Member to change his vote at any stage of the proceeding before the decision of the House thereon should have been finally and conclusively pronounced from the Chair.

On appeal the decision was sustained, 122 yeas to 49 nays.

5932. On December 28, 1804,[2] Mr. Simon Larned, of Massachusetts, being recognized, said that a mistake had been committed by him in giving his vote on the final question taken this day on the bill to amend the charter of the town of Alexandria; that he had intended to vote against, but had been recorded by the clerk as in favor of it.

After debate the Speaker[3] decided that, in his opinion, agreeably to the rules of the House, after any question taken by yeas and nays, or otherwise, had been finally determined, and so stated from the Chair, no Member could be permitted to change his vote on such question unless by the unanimous consent of the Members present.

From this decision an appeal was made to the House by two Members. The Chair on this appeal was sustained.[4]

5933. On January 22, 1842,[5] immediately after the reading of the Journal, Mr. Patrick G. Goode, of Ohio, rose and stated to the House that in voting against

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[1] John W. Jones, of Virginia, Speaker.

[2] Second session Eighth Congress, Journal, pp. 167 (old edition), 71 (Gales & Seaton)

[3] Nathaniel Macon, of North Carolina, Speaker.

[4] The Annals gives the following (p. 865): Mr. Joseph B. Varnum, of Massachusetts, suggested that his colleague from Massachusetts (Mr. Larned) had made a mistake in his vote on the Alexandria bill which he wished to be permitted to rectify. Whether it would alter the decision of the House he did not know. The gentleman voted for the bill, although he was against it altogether, on the impression that he was voting on the question of recommitment instead of its final passage. If he was permitted to record his vote according to his intention it would make the result stand 53 to 52; and if the Speaker was to add his vote to the minority the bill would not pass.

This gave rise to a great deal of conversation relative to the rules of the House and its uniform practice, which appeared to have been against an alteration of the vote by yeas and nays, unless the alteration would produce no effect upon the vote by changing the majority into a minority. This idea was combated by the reason of the thing. It was deemed extremely improper to confine Members to lapsus linguae without suffering them to explain. While the argument was going on, Mr. Bailey (the Clerk) had been induced to examine his list of yeas and nays with the most careful scrutiny, an had discovered that the vote really was 55 yeas to 51 nays. The alteration requested being now found not to alter the decision, several Members hoped the gentleman might be indulged; but this having to be done by unanimous consent of the House, and Mr. Frederick Conrad, of Pennsylvania, refusing his consent, the alteration was not made.

[5] Second session Twenty-seventh Congress, Journal, p. 263; Globe, p. 160.

the laying upon the table, on the previous day, of the question of reception raised on the petition of citizens of the State of Massachusetts (presented by Mr. John Quincy Adams) for conferring certain privileges on colored persons, he voted under a misapprehension of the nature of the petition. He thereupon asked leave to change his vote.

The Speaker[1] I decided that such a request could only be granted by unanimous consent.

Unanimous consent was refused.

5934. On a vote for election of an officer a Member may change his vote at any time before the announcement of the result.—On January 18, 1850,[2] Mr. Robert M. McLane, of Maryland, rising to a parliamentary inquiry, asked whether it did not require the unanimous consent of the House to enable a Member to change his vote.

The Speaker[3] said:

> Under the practice of the House, so far as the Chair at this moment remembers it, unanimous consent would not be required; but a Member may change his vote at any time before the tellers report the result. The principle assimilates to that on which gentlemen are allowed, on taking the yeas and nays, to change their votes at any time before the Chair announces the result. This is the opinion of the Chair. Such has been the practice, and that practice has been acquiesced in by the House in all the elections, so far as they have proceeded.[4]

5935. In rare instances the House has refused to permit a Member to correct the record of his vote on a previous day.—On January 9, 1817,[5] Mr. David Clendennin, of Ohio, stated that on the previous day he had voted in the negative, when he intended to have voted in the affirmative, upon the question taken by yeas and nays on the bill relating to certain war claims, and moved that he have leave to correct the said mistake by placing his vote in the affirmative on that question.

The question being taken, it was determined in the negative.

5936. On July 7, 1822,[6] Mr. Jonathan McCarthy, of Indiana, stated in his place that, when the bill to modify and continue the act entitled "An act to incorporate the subscribers to the Bank of the United States" was under consideration in this House, he voted upon the amendment of Mr. Thomas, of Maryland, in the affirmative, but his name was, by mistake, recorded in the negative,[7] and he therefore asked the permission of the House to have his name changed from the negative to the affirmative side.

The House (although satisfied that he had voted in the affirmative as stated) refused to make the correction asked, or to have the ayes and noes as recorded changed. But it was agreed that the motion and the fact should be spread on the Journal.

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[1] John White, of Kentucky, Speaker.

[2] First session Thirty-first Congress, Globe, p. 186.

[3] Howell Cobb, of Georgia, Speaker.

[4] The House was at this time engaged in voting for Clerk and other officers.

[5] Second session Fourteenth Congress, Journal, p. 161; Annals, p. 442.

[6] First session Twenty-first Congress, Journal, p. 1109.

[7] This vote occurred July 2. (See Journal, pp. 1059, 1060.)

5937. Members present in custody of the Sergeant-at-Arms for absence were permitted to vote, although in earlier instances the right had been denied.

The Speaker declined to assume the authority to deprive Members present in custody of the Sergeant-at-Arms of the right to vote.

The House having, on April 28, 1892,[1] adopted a continuing order of arrest, on April 29 the Sergeant-at-Arms made report that certain Members would present themselves at the bar to answer to the House.

During the proceedings Mr. William W. Bowers, of California, presented his excuse for failure to attend part of the session of the preceding day, and Mr. Richard P. Bland, of Missouri, moved that he be excused.

The question being put, there were on the roll call 123 yeas and 53 nays.

Before the result was announced, Mr. Julius C. Burrows, of Michigan, submitted the question of order, whether Members in custody of the Sergeant-at-Arms were entitled to vote on the pending question, and made the point that several of such Members having voted, their names should be stricken from the roll; and cited in support of the point a decision in the Thirtieth Congress.

The Speaker[2] overruled the point of order, and held as follows:

The case referred to (in the Thirtieth Congress),[3] was a case in which 50 Members, perhaps, were under arrest, and a motion was made to discharge them all. The question was raised whether the Members under arrest were competent to vote on that question, and, as the Chair understands, the then Speaker held that they were not. What reason may have been given the present occupant of the chair does not know; perhaps it may have been because they were under arrest. But the present question is as to excusing the gentleman from California, and the question of the right to vote is raised not against that gentleman, but against other gentlemen who are under arrest or on parole by order of the House. The point is made that those gentlemen can not vote. The Chair does not understand how their right to vote can be taken away, and certainly under the present circumstances, the roll having been called and the gentlemen having answered, the Chair would not assume authority to direct their names to be stricken from the roll. If the House should desire to do so, it is another matter. The Chair could not assume any such authority under the circumstances.

5938. On January 8, 1894,[4] the House was considering the special order providing for the consideration of a bill (H. R. 4864) "to reduce taxation, to provide revenue for the Government, and for other purposes." A roll call having been completed, Mr. Thomas B. Reed, of Maine, made the point that certain Members who had been taken into custody by the Sergeant-at-Arms had voted on the question just taken and that their names should be stricken from the list of those voting.

The Speaker[2] stated that no report from the Sergeant-at-Arms had been made showing that Members were in custody and that the House had no power to thus deprive Members of their right to vote.

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[1] First session Fifty-second Congress, Journal, pp. 167, 168; Record, pp. 3762, 3768, 3770.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] This case arose July 13, 1848 (first session Thirtieth Congress, Globe, p. 928; Journal, p. 1035), and the circumstances were as stated in the decision of Mr. Speaker Crisp. Mr. Abraham W. Venable, of North Carolina, rising to a parliamentary inquiry, asked if the Members under arrest might vote. The Speaker (Robert C. Winthrop, of Massachusetts,) replied: "The Chair is of the opinion that they are not entitled to vote." The Speaker also declined to recognize one of them to make a motion. The Globe records these incidents, but they are not among the decisions of questions of order in the Journal,

[4] Second session Fifty-third Cougress, Journal, pp. 71, 72; Record, pp. 530, 531.

5939. On February 10, 1865,[1] about fifty Members of the House, presented under an order of arrest adopted the evening before, were brought to the bar of the House by the Sergeant-at-Arms. The order of arrest was as follows:

Resolved, That the Sergeant-at-Arms be directed to bring the Members now, absent without leave before the bar of the House at 1 o'clock to-morrow, Friday, February 10, 1865, or as soon thereafter as possible; and that they then be required to show cause why they shall not be declared in contempt of the House, and abide the order of the House.

Questions arising as to procedure, the Speaker[2] said:

The Chair will state that his predecessors have decided that a gentleman under arrest has no right to make a motion or a speech except in reference to the question. * * * The names of over fifty gentlemen are included in this list; and neither of those gentlemen is entitled to vote until he is excused by the House.

5940. On February 20, 1869,[3] several Members were arraigned at the bar of the House, having been ordered to be arrested during proceedings on the previous day. And the question was put on laying on the table the whole question as to the punishment of the gentlemen at the bar.

The Speaker[2] said:

The gentlemen at the bar of the House, of course, can not vote on this question.

5941. Every Member shall be present and vote unless he have a direct personal or pecuniary interest in the question.

Form and history of Rule VIII, section 1, relating to attendance and voting of Members.

The Rules of the House provide, in section I of Rule VIII, as follows:

Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

This rule in its present form dates from the Fifty-first Congress,[4] when the old form that had existed since the revision of the Forty-sixth Congress was modified by striking out, after the word "unless," in the last clause, the following words: "on motion made before division on the commencement of the roll call and decided without debate, he shall be excused, or." The effect of this was to eliminate the motion to excuse a Member from voting, which had become a fruitful source of obstruction. The words were restored in the Fifty-second Congress, but dropped again in the Fifty-third.

The form adopted in the revision of the Forty-sixth Congress[5] was derived from the old rule No. 29, which dated from April 7, 1789,[6] and provided that "no Member shall vote on any question in the event of which he is immediately and particularly interested; or in any case where he was not present when the question was put." To this was added the old rule No. 31, dating also from April 7, 1789, and

[1] Second session Thirty-eighth Congress, Globe, p. 735.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Third session Fortieth Congress, Globe, p. 1422.

[4] First session Fifty-first Congress, Record, p. 1105. 1,

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] First session First Congress, Journal, p. 9.

providing that "every Member who shall be in the House when a question is put shall vote on the one side or the other, unless the House for special reasons shall excuse him;" [1] the rule, dating from April 13, 1789,[2] "that no Member absent himself from the service of the House,[3] unless he have leave or be sick and unable to attend;" and a rule relating to motions to excuse from voting, which dated from September 14, 1837.[4]

In 1847 [5] the House found it necessary to rescind the rule which permitted a Member to make a brief verbal statement of his reasons for asking to be excused from voting.

5942. The Speaker has no power to compel a Member to vote.—On the legislative day of April 4, 1888,[6] but on the calendar day of April 9, a vote had been taken by yeas and nays, when Mr. Charles A. Boutelle, of Maine, made the point of order that Mr. C. R. Breckinridge, of Arkansas, had failed to vote, in violation of the rule.

The Speaker pro tempore [7] overruled the point of order on the ground that the Speaker had no power to compel a Member to vote.

5943. A Member declined to vote in 1832, and the House found itself powerless to compel a vote in this as in later instances.—On July 11, 1832 [8] the House was considering a resolution relating to words spoken in debate by Mr. William Stanbery, of Ohio, and the yeas and nays were being caused on the question of agreeing to the resolution. When the name of Mr. John Quincy Adams, of Massachusetts, was called, Mr. Adams rose and asked to be excused from voting,[9] assigning his reasons in a paper which the Clerk read as follows:

> I ask to be excused [10] from voting on the resolution, believing it to be unconstitutional, inasmuch as it assumes inferences of fact from words spoken by the Member, without giving the words themselves; and the facts not being warranted, in my judgment, by the words which he did use.

The question being taken, "Shall Mr. Adams be excused?" it was decided in the negative.

Mr. Adams's name was again called, when he responded: "I decline to answer."

A motion to reconsider the vote whereby the House had declined to excuse Mr. Adams being decided in the negative, the Speaker read the rule of the House requiring every Member to vote, and directed the Clerk to call Mr. Adams's name again.

The Clerk again called the name, but no response was made by Mr. Adams, who was in his seat in the House.

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[1] Members are never compelled to vote.

[2] First session First Congress, Journal, p. 13.

[3] The Continental Congress had the rule: "No member shall leave Congress without permission of Congress or his constituents.—(Journal of Congress, May 26, 1778.)

[4] First session Twenty-fifth Congress, Globe, p. 31.

[5] Second session Twenty-ninth Congress, Journal, p. 538.

[6] First session Fiftieth Congress, Journal, pp. 1543, 1545; Record, p. 2818.

[7] William H. Hatch, of Missouri, Speaker pro tempore.

[8] First session Twenty-second Congress, Journal, pp. 1139–1141; Debates, pp. 3905, 3907.

[9] Under the present practice of the House a roll call may not be interrupted in this way.

[10] The motion that a Member be excused from voting now has no privilege.

Thereupon Mr. William Drayton, of South Carolina, moved the following resolutions:

Resolved, That John Quincy Adams, a Member from Massachusetts, in refusing to vote when his name was called by the Clerk, after the House had rejected his application to be excused from voting, for reasons assigned by him, has committed a breach of one of the rules of the House.

Resolved, That a committee be appointed for the purpose of inquiring and reporting to this House the course which it ought to adopt in a case so novel and so important.

Mr. Drayton, in presenting his resolutions, said that if this breach of rule should be passed over in silence it might hereafter be in the power of a minority to defeat the legislative functions of the body by combining together in a similar refusal.

In order to complete the roll call on the pending resolution—that relating to Mr. Stanbery—the consideration of Mr. Drayton's resolution was postponed until the next day.

On July 12,[1] after considerable discussion, during which some doubt was expressed as to the constitutional right of the House to make a rule requiring Members to vote, the resolutions were laid on the table, yeas 89, nays 63.

5944. On the legislative day of March 3, 1835,[2] but in the early morning hours of the calendar day of March 4, there was a vote by yeas and nays, and the name of Mr. Samuel Beardsley, of New York, was called. Thereupon he declined to answer, on the ground that the term for which the Members of the Twenty-third Congress had been elected had expired, and that, according to the Constitution of the United States, this House had ceased to exist at 12 o'clock midnight.

After some remarks and suggestions from various Members and the Chair, it was informally agreed to pass the name of Mr. Beardsley.

5945. On December 14, 1838,[3] Messrs. John Quincy Adams, of Massachusetts, and Henry A. Wise, of Virginia, refused to vote on certain resolutions declaring the powers of Congress in regard to slavery and providing a way of disposing of resolutions relating to petitions for the abolition of slavery.

Each, as his name was called, arose and announced that he refused to vote. The Speaker[4] called to order for such interruptions of the roll call.[5]

5946. A Member having declined to vote in 1836, the House finally abandoned its attempt to compel him.

A Member having declined to vote on a call of the yeas and nays, the Speaker held that the resulting question of order might be acted on at the conclusion of the call of the roll.

Instance of an early protest against prolonging a session into the hours of Sunday.

On March 26, 1836,[6] the House having under consideration an appeal from a ruling of the Speaker on the question of allowing the session to be protracted after

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[1] Journal, pp. 1143, 1144; Debates, pp. 3908–3912.

[2] Second session Twenty-third Congress, Journal, p. 527; Debates, p. 1660.

[3] Third session Twenty-fifth Congress, Journal, p. 83; Globe, p. 33.

[4] James K. Polk, of Tennessee, Speaker.

[5] For an instance in the Senate where a Senator refused to vote see Record, p. 2474, October 13, 1893, first session Fifty-third Congress.

[6] First session Twenty-fourth Congress, Journal, p. 580; Globe, p. 265.

midnight Saturday, a motion was made by Mr. George W. Lay, of New York, that the House do adjourn. And in deciding the question by yeas and nays, Mr. Henry A. Wise, of Virginia, rose and notified the House that Mr. John Quincy Adams, of Massachusetts, was in his seat when his name was called by the Clerk and that he did not answer to the call, and thereupon demanded a compliance with that rule [1] of the House which declares that "every Member who shall be in the House when a question is put shall give his vote, unless the House for special reasons shall excuse him."

The Speaker [2] stated that the proper time to make the question was when the name of the Member had been called the second time; that, several Members having been called and answered after the name of Mr. Adams had been passed, and the roll not being called through, it would be the proper time to act on the question when the call of the roll had been completed.

The name of Henry A. Wise, of Virginia, was called, when he rose and stated that he declined to answer until Mr. John Quincy Adams and other Members whose names stood before his on the list of yeas and nays, and who were in their seats when their names, respectively, were called, and who did not vote, should have voted.

A motion was then made by Mr. Samuel Beardsley, of New York, that Mr. Adams be excused from voting.

Mr. Adams declined to be excused, and stated to the House his reasons therefor, saying that he had no conscientious scruples against voting or transacting business on Sunday, but he held that the House had no right to sit there at that hour without first passing an express order setting forth that the public business demanded it.

Mr. Beardsley thereupon withdrew his motion, and Mr. Charles F. Mercer, of Virginia, moved that Mr. Adams be not required to vote.

After debate this motion was withdrawn, and Mr. Wise moved that Mr. Adams be compelled to vote. This also was withdrawn after debate, and, after some remarks and suggestions from various Members and from the Chair, it was informally agreed to pass the name of Mr. Adams and other Members who had been in their seats and had not voted.[3]

Of the debate on Mr. Wise's motion to compel Mr. Adams to vote none is given in the record of debates, but it is stated that it was "of an angry and painfully personal character."

5947. A Member having declined to vote, and a question arising, the Speaker held that the pending vote should be completed and announced, leaving the incidental question until after the announcement.—On May 25, 1836 [4] the House was considering a series of resolutions reported from the select committee to whom had been referred various matters relating to the abolition of

[1] See section 5941 of this chapter.

[2] James K. Polk, of Tennessee, Speaker.

[3] This question has risen many times. On February 24, 1875, Mr. Speaker Blaine said that he knew of no means whereby a Member could be forced to vote. (Second session Forty-third Congress, Record, p. 1733.)

[4] First session Twenty-fourth Congress, Journal, pp. 877–879; Debates, pp. 4032, 4050.

slavery in the District of Columbia. Pending the calling of the yeas and nays on the first of these resolutions,. Mr. Thomas Glascock, of Georgia, Mr. Francis W. Pickens, of South Carolina, and Mr. John Robertson, of Virginia, asked to be excused from voting, and Messrs. Waddy Thompson, jr., of South Carolina, and Henry A. Wise, of Virginia, refused to vote. Also, after the roll had been called through, Mr. John Chambers, of Kentucky, rose and stated that he also declined to vote.

The question was at once stated on excusing Mr. Glascock, when Mr. John Quincy Adams, of Massachusetts, required that Mr. Glascock should state his reasons for not voting, and that these reasons should be entered on the Journal. Debate arose, and the matter went over until the next day.

Then, on May 26, the Speaker [1] stated the condition of the subject before the House. The select committee had made a report concluding with three resolutions. The previous question had been demanded and was ordered to be put by a vote of the House. The main question was on concurring with the committee in their resolutions. Before the question. was put, a division was called, and the vote taken by yeas and nays on agreeing to the first resolution. Pending the call of the yeas and nays on this vote, several members declined voting, and asked to be excused; other Members declined to vote, but did not ask to be excused. After the list of Members was called through, and before the result of the vote was announced, some other points were raised upon the question of excusing a Member; and at this stage of the proceedings on yesterday, the House passed to the special order of the day.

The Speaker stated that in 1832 a case had occurred where a Member declined voting, and asked to be excused, and the decision of the question before the House was announced without his vote, though the House had refused to excuse him, leaving the incidental question connected with his refusal to vote for the after consideration of the House. Were a different course to be pursued, it would lead to much embarrassment, as upon the question to excuse one Member from voting, taken by yeas and nays, another might decline voting on that question and ask to be excused; and this course might be pursued still further, so as to prevent any decision upon the original question before the House. And as the result in this case could not be affected by the votes of those who declined voting, whether given to the one side or the other, the Chair was of the opinion that the vote of yesterday should not be suspended, but the decision upon the resolution of the committee should be announced, leaving the incidental questions which had arisen to be subsequently settled, whenever it should suit the pleasure of the House to take them up for consideration.[2]

Mr. Elisha Whittlesey, of Ohio, having appealed, the decision of the Chair was sustained, yeas 137, nays 9.

The main question having been disposed of, the cases of the Members not voting came up, but were very soon displaced by other business.

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[1] James K. Polk, of Tennessee, Speaker.

[2] On May 30 this decision was the subject of debate, and the Speaker justified it in a lengthy review. (See Debates, pp. 4090–4094.)

5948. On March 10, 1840,[1] Mr. John Quincy Adams, of Massachusetts, did not vote on a question relating to the New Jersey contested election cases. There upon, at the end of the roll call, Mr. David Russell, of New York, moved that Mr. Adams be required to vote before the announcement of the result by the Chair. Mr. Russell urged that as the rule required Members to vote it should be enforced.

A point of order was made that the motion was not in order at that time. Mr. Speaker Hunter having ruled that the motion was in order, an appeal was taken, and the Chair was overruled, yeas 86, nays 103. So the attempt to require Mr. Adams to vote failed.

5949. The rule of parliamentary law as to the conduct of a Member when his private interests are concerned in a question.—Section XVII of Jefferson's Manual provides:

> Where the private interests of a Member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to.[2] (2 Hats., 119, 121; 6 Grey, 368.)

5950. The Speaker has usually held that the Member himself should determine whether or not his personal interest in a pending matter should cause him to withhold his vote.—On March 2, 1877,[3] the yeas and nays were being taken on a motion to suspend the rules in order to take up the Senate bill (No. 14) to extend the time for the construction and completion of the Northern Pacific Railroad.

During the call of the roll Mr. William P. Frye, of Maine, said that he did not feel at liberty to vote on the bill until the Chair had ruled upon his right to do so, since he was a stockholder in the road.

The Speaker[4] said:

> Rule 29 reads: "No Member shall vote on any question in the event of which he is immediately or particularly interested."
>
> Having read this rule, it is for the gentleman himself to determine whether he shall vote, not for the Chair.

Mr. Frye declined to vote.

On December 17, 1895[5] the House was considering the report of the Committee on Rules, and had reached the portion relating to the Committee on Elections, the pending question being an amendment offered by Mr. William L. Terry, of Arkansas, relating to the mode of considering election cases in the House.

As the vote was about to be taken, Mr. Jo Abbott, of Texas, rising to a parliamentary inquiry, stated that his seat was contested, and that he had an indirect interest in both the amendment and the rule. Therefore he asked for the advice of the Speaker.

The Speaker[6] said:

> The Chair can not undertake to decide that question. The gentleman must decide it for himself.

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[1] First session Twenty-sixth Congress, Journal, p. 575; Globe, p. 256.

[2] For rule of the House, see section 5941 of this chapter.

[3] Second session Forty-fourth Congress, Record, p. 2132.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] First session Fifty-fourth Congress, Record, p. 216.

[6] Thomas B. Reed, of Maine, Speaker.

Thereupon Mr. Abbott asked to be excused from voting, and the House excused him.[1]

5951. On March 1, 1901,[2] the House had voted by yeas and nays on the motion to concur in the Senate amendments to the army appropriation bill, when Mr. John J. Lentz, of Ohio, questioned the vote of Mr. John A. T. Hull, of Iowa, alleging that he had a personal interest in the pending question, and should not under the rule be allowed to vote.

The Speaker[3] said:

But the gentleman will also find in the Digest that it is the uniform practice that each gentleman must be the judge of that for himself. The Chair overrules the point of order.

5952. Where the subject-matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting.

The power of the House to deprive one of its Members of the right to vote on any question is doubtful.

On April 11, 1874,[4] the House was considering the bill of the House (No. 1572) to amend the several acts providing a national currency and to establish free banking, and for other purposes.

During the proceedings Mr. Robert M. Speer, of Pennsylvania, made the point of order that certain Members holding stock in national banks were not entitled to vote, being personally interested in the pending question. Mr. Speer mentioned three Members—Messrs. Poland, of Vermont, and Hamilton and Phelps, of New Jersey—who were officers of national banks, and therefore, as he held, not entitled to vote on the pending question, which included the following proposition:

That in lieu of the tax of 1 per cent per annum now imposed by law on the outstanding circulation of national banks, a tax of 3 per cent per annum, payable semiannually in gold, shall be collected upon the circulation which has been issued to each national bank which has not been returned for cancellation.

The Speaker,[5] in ruling, said:

The Chair will say that the question in fact lies somewhat back of the rules of the House, and while the Chair is going to give his opinion upon the rule and construe it, he begs to make a remark that goes somewhat deeper than the rule. When a very distinguished predecessor in this chair, Mr. Nathaniel Macon, of North Carolina, occupied it, as is familiar to the House, a question arose upon the amendment to the Constitution changing the mode of counting the votes for the election of President and Vice-President. The rule at that time was peremptory that the Speaker should not vote except in the case of a tie. It has since been changed. The vote, if the Chair remembers correctly, as handed up to Mr. Macon was 83 in favor of the amendment and 42 opposed to it. The amendment did not have the necessary two-thirds and the rule absolutely forbade the Speaker to vote, and yet he did vote, and the amendment became engrafted in the Constitution of the United States upon that vote, and he

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[1] On July 7, 1797 (First session Fifth Congress, Annals, p. 459), Mr. Thomas Blount, a Member of the House, asked to be excused from voting on the question of the impeachment of a Senator who was his brother. The House excused him. On May 5, 1828 (First session, Twentieth Congress, Journal, p. 687; Debates, p. 2576), Mr. John Floyd, of Georgia, asked to be excused from voting on a bill relating to deported slaves on the ground that he was "immediately and particularly interested." The House excused him.

[2] Second session Fifty-sixth Congress, Record, pp. 3393, 3384.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Forty-third Congress, Journal, pp. 771, 772; Record, pp. 3019, 3020.

[5] James G. Blaine, of Maine, Speaker.

voted upon the distinct declaration that the House had no right to adopt any rule abridging the right of a Member to vote; that he voted upon his responsibility to his conscience and to his constituents; that although that rule was positive and peremptory it did not have any effect upon his right. He voted, and, if the Chair remembers correctly, it was attempted to contest afterwards by some judicial process whether the amendment was legally adopted. But the movement proved abortive, and the amendment is now a part of the Constitution. Now, the question comes back whether or not the House has a right to say to any Member that he shall not vote upon any question, and especially if the House has a right to say that if 147 Members come here, each owning one share of national-bank stock (which there is no law to prohibit them from holding), they shall by reason of that very fact be incapacitated from legislating on this whole question.

If there is a majority of one in the House that holds each a single share of stock, and it incapacitates the Members from voting, then of course the House can not approach that legislation; it stops right there. * * * Now, it has always been held that where legislation affected a class as distinct from individuals a Member might vote. Of course everyone will see the impropriety of a sitting Member in the case of a contest voting on his own case. That is so palpably an individual personal interest that there can be no question about it. It comes right down to that single man. There is no class in the matter at all. But where a man does not stand in any way distinct from a class, the uniform ruling of the American House of Representatives and of the British Parliament, from which we derive our rulings, have been one way. In the year 1871-the Chair is indebted for the suggestion to the gentleman from Massachusetts [Mr. G. F. Hoar], but he remembers the case himself—when a bill was pending in the British House of Commons to abolish the right to sell commissions in the army, which officers had always heretofore enjoyed, and to give a specific sum of money to each army officer in lieu thereof, there were many officers of the army members of the British House of Commons, as there always are, and the point was made that those members could not vote on that bill because they had immediate and direct pecuniary interest in it. The House of Commons did not sustain that point, because the officers referred to only had that interest which was in common with the entire class of army officers outside of the House—many thousands in number.

Since I have had the honor of being a Member of this House, on the floor and in the chair, many bills giving bounty to soldiers have been voted on here. We have the honor of the presence on this floor of many gentlemen distinguished in the military service who had the benefit of those bounties directly and indirectly. It never could be made a point that they were incapacitated from voting on those bills. They did not enjoy the benefit arising from the legislation distinct and separate from thousands of men in the country who had held similar positions. It was not an interest distinct from the public interest in any way. * * * And the same with pensions. * * * And further, as the gentleman from Massachusetts, the chairman of the Committee on Ways and Means [Mr. Henry L. Dawes], has well said, if it should be decided to-day that a Member who holds a share of national-bank stock shall not vote on a question relating to national banks, then the question might come up whether a Member interested in the manufacture of cotton shall have the right to vote upon the tariff on cotton goods; or whether a Member representing a cotton State shall vote upon the question whether cotton shall be taxed, for that interest is largely represented here by gentlemen engaged in the planting of cotton. And so you can go through the whole round of business and find upon this floor gentlemen who, in common with many citizens outside of this House, have an interest in questions before the House. But they do not have that interest separate and distinct from a class, and, within the meaning of the rule, distinct from the public interest. The Chair, therefore, has no hesitation in saying that he does not sustain the point of order presented by the gentleman from Pennsylvania [Mr. Speer].

Mr. William S. Holman, of Indiana, having appealed from this decision, the appeal was laid on the table, and so the decision of the Chair was sustained.

5953. It was held in 1840 that the sitting Members from New Jersey might vote on incidental questions arising during the consideration of their titles to their seats.—On June 16, 1840,[1] the report of the Committee on Elections relating to the New Jersey contests was presented as a question of privilege, and the Speaker having decided it not in order, an appeal was taken from his

[1] First session Twenty-sixth Congress, Journal, pp. 1283, 1300; Globe, p. 531.

decision. Before the result of the vote on the appeal was announced, Mr. Edward Stanly, of North Carolina, raised this question of order:

Have the sitting Members from New Jersey, viz, whose rights to seats in this House are in controversy, the right to vote on the question just taken?

The Speaker [1] decided that they had the right to vote on that question, as it was a question affecting the time only at which the subject should be considered, and did not touch the merits of the case.[2]

From this decision Mr. Stanly took an appeal to the House, and the decision of the Chair was sustained, 124 yeas to 39 nays.

5954. Members who were stockholders in the Bank of the United States were excused from voting on a question relating to that institution.—On May 10, 1830,[3] the question being on a motion to lay on the table resolutions relating to the renewal of the charter of the Bank of the United States, Messrs. William Drayton, of South Carolina, and Campbell P. White, of New York, were severally excused from voting on the question, because they were interested, as stockholders, in the Bank of the United States.

5955. A bill affecting a particular corporation being before the House, the Speaker held that a Member directly interested in that corporation as a shareholder had no right to vote.

Instance wherein the Committee of the Whole reported a question of order to the House for decision.

On February 28, 1873,[4] the Senate amendments to the legislative appropriation bill were under consideration in Committee of the Whole House on the state of the Union, and a vote by tellers was taken on an amendment relating to the Central Pacific Railroad.

Before the announcement of this vote, Mr. William S. Holman, of Indiana, made the point of order that Mr. Samuel Hooper, of Massachusetts, who had voted, was personally interested in the railroad, and therefore not entitled to vote under the rule.

The Chairman [5] said:

That is a question of fact, which the Chair is not called upon to decide. The Chair rules that no Member interested directly in the effect of this vote is entitled to vote—neither the gentleman from Massachusetts nor any other Member of the House. If any gentleman violates this rule in voting, he is subject to such discipline in this House as the House itself shall determine.

Further objection being made, Mr. James A. Garfield, of Ohio, moved that the Committee rise and report the question to the House for its decision. This motion being agreed to, the Speaker [6] held:

The Chairman of the Committee of the Whole reports that the Committee have had under consideration the Senate amendments to the legislative, executive, and judicial appropriation bill; that the ninety-third amendment of the Senate being reached (relating to the payment of interest by the Union Pacific and Central Pacific Railroad companies), the gentleman from Indiana [Mr. Holman] raised the

[1] Robert M. T. Hunter, of Virginia, Speaker.

[2] For rules of the House relating to personal interest, see section 5941 of this volume.

[3] First session Twenty-first Congress, Journal, p. 621; Debates, p. 922.

[4] Third session Forty-second Congress, Globe, p. 1916.

[5] Henry L. Dawes, of Massachusetts, Chairman.

[6] James G. Blaine, of Maine, Speaker.

point of order upon the gentleman from Massachusetts [Mr. Hooper] that the latter gentleman, being directly interested, had no right to vote. Upon that question this Chair will state that as a matter of parliamentary law it is laid down in the rules that where the interest is direct a Member has no right to vote. In this case if the gentleman from Massachusetts [Mr. Hooper] be a stockholder in that road the Chair would rule he had no right to vote. It differs from the case of national banks, which has been brought up in several instances, in the fact that this is a single corporation, and is not of general interest held throughout the country by all classes of people in all communities. It was long ago ruled by Speaker Winthrop, in a decision in the Massachusetts legislature, which has ever since been held to be a guide on that subject, on the point being made against a gentleman who had some corporate interest in some corporations which were general throughout the Commonwealth, and it was shown to be an interest in no sense individual, and could not be narrowed down to a question of personal interest as separate and distinct from the general interest. In reference to the question of national banks, which circulate the currency of the whole nation, whose stockholders are numbered by thousands, residing in every community, the Chair would hold no point could be made against a Member, because there is no interest there separate and distinct from the general public interest. But if a stockholder in a single railroad corporation, as in this case, has his vote challenged it would be the duty of the Chair to hold, if he is actually a stockholder of the road, that he has no right to vote. * * * The Chair so decides without any knowledge in this particular case. It is for the gentleman from Massachusetts [Mr. Hooper] whose delicacy the Chair knows and cheerfully recognizes to relieve the House from any embarrassment on that question.

Mr. Hooper withdrew his vote.

5956. A point of order being made that a Member was disqualified for voting by a personal interest, the Speaker held that the Chair might not deprive a Member of his constitutional right to represent his constituency.—On January 19, 1881,[1] the Speaker announced as the regular order of business the bill of the House (H. R. 4592) to facilitate the refunding of the national debt. The House having proceeded to its consideration, Mr. Edward H. Gillette, of Iowa, as a question of order under Rule VIII, clause 1, made the point of order that Mr. John S. Newberry, of Michigan, was not entitled to vote on the pending bill or any amendment thereto, basing said point on the statement of Mr. Newberry that he was a stockholder and director in a national bank, and that as a result Mr. Newberry had a "direct personal or pecuniary interest" in said bill.

After debate the Speaker[2] said:

The Chair must be governed by the rules of the House and by the interpretations which have been placed on those rules in the past by the House, * * * This is not a new question. It was brought to the attention of the country in a remarkable manner in the Seventh Congress when Mr. Macon, then Speaker of the House, claimed his right as a representative of a constituency to vote upon a pending question, notwithstanding there was a rule of the House to the contrary. * * * The Chair is not aware that the House of Representatives has ever deprived a Representative of the right to represent his constituency. A decision of the Chair to that extent would be an act, the Chair thinks, altogether beyond the range of his authority. The Chair doubts whether the House itself should exercise or has the power to deprive a Representative of the people of his right to represent his constituency. The history of the country does not show an instance in which a Representative has been so deprived of that right.

The Chair then cited previous decisions, concluding as follows:

In view of these decisions and because of the reasons given in this debate, the Chair overrules the point of order.

Mr. Gillette having appealed, the appeal was laid on the table, yeas 221, nays 32.

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[1] Third session Forty-sixth Congress, Journal, p. 204; Record, pp. 764–769.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

5957. In the proceedings relating to the New Jersey Members in 1839, each contestant did not generally vote on his own case, but voted on the identical cases of his associates.—On December 6, 1839,[1] the House had not yet organized, and Mr. John Quincy Adams, of Massachusetts, was presiding as Chairman until the House could settle questions arising from the fact that there were two sets of claimants for five of the New Jersey seats.

The pending question was on agreeing to a resolution that the Clerk should proceed with the call of the roll by States in the usual way, calling the names of such Members from New Jersey as held commissions from the governor of that State.

Mr. R. Barnwell Rhett, of South Carolina, moved that the resolution lie on the table, and in putting the question on this motion an inquiry arose as to whether or not the New Jersey Members referred to in the resolution should be allowed to vote.

The Chairman held that they might vote.

Mr. Rhett then called the attention of the Chair to the fact that the meeting had adopted temporarily the rules of the last House, and that among those rules was the following:

> No Member shall vote on any question in the event of which he is immediately or particularly interested.

The Chairman considered that this rule did not apply to the present case, because it was not the Members from New Jersey but their constituents who were interested.

On the succeeding day, recurring to the subject, he said that there was a precedent under the old form of government which might serve to throw some light on this subject. If gentlemen would consult the journals of the old Congress, fourth volume, page 406, they would find that a gentleman claiming a seat from the State of Rhode Island, by the name of Howard, rose to speak upon a motion, when he was called to order by Mr. Mercer, and a question was made whether he had a right to speak or participate in the proceedings of Congress, because the State of Rhode Island only elected Members for one year, and that year had expired. This question was put to the House in ten or fifteen different forms, as to whether the Members from Rhode Island should be permitted to vote, and on every one of these questions the Members from Rhode Island did vote until the question was finally given up.

In opposition to this, Mr. James J. McKay, of North Carolina, contended that the English precedents—and he read from Hatsell—were the other way. It was the uniform practice in the British Parliament, when seats were contested, that both parties should withdraw until their case was decided by those who were not personally interested in the matter. As to the case in the Continental Congress, the Rhode Island Members did not vote in their own case in the first instance, although afterwards they did.

On December 10 the question was taken on Mr. Rhett's motion, and none of the New Jersey Members whose titles to seats were in dispute voted.

There was, however, a disputed vote cast by a Pennsylvania Member whose seat was contested, and a question being raised, the Chairman decided that this vote

[1] First session Twenty-sixth Congress, Journal, pp. 7, 13; Globe, pp. 21, 29, 36, 40.

could not be questioned, the effect of this decision being that the motion of Mr. Rhett would be decided in the negative by a tie vote.

An appeal being taken from the decision of the Chair, on that appeal four doubtful New Jersey votes were cast on one side and three on the other.

Thereupon the right of each of the Members casting these doubtful votes was submitted to the House, the question being first taken whether the vote of Mr. John B. Aycrigg, of New Jersey, should be counted.

Mr. Aycrigg announced that he should not vote on his own case; but Messrs. Halstead, Maxwell, Stratton, and Yorke, whose cases were precisely the same as his, voted that his vote be counted, while three of the contestants on the other side voted in the negative.

It was decided that Mr. Aycrigg's vote should not be counted, and then the question was taken on the vote of Mr. Maxwell. On this question Mr. Maxwell did not vote. Mr. Aycrigg also did not. But Messrs. Halstead, Stratton, and Yorke voted in favor of counting the vote of Mr. Maxwell.

The question on counting the votes of Messrs. Halstead, Stratton, and Yorke were taken together, and on this vote none of these voted. Messrs. Aycrigg and Maxwell also did not vote.

5958. The same question affecting the right of four Members to their seats, each voted on the cases of his associates, but not on his own.

An instance wherein the Speaker decided that a Member should not vote, because of disqualifying personal interest.

On February 14, 1844,[1] the House was considering the following resolution:

Resolved, That the following Members from New Hampshire, to wit, Edmund Burke, John R. Reding, Moses Norris, jr., and John P. Hale, have been duly elected, and are entitled to seats in this House as Members from the State aforesaid.

Mr. Robert C. Schenck, of Ohio, raised the question of order that under the rule providing, "No Member shall vote on any question in the event of which he is immediately and particularly interested," the Members from the State of New Hampshire were not entitled to vote on this resolution.

Before the Speaker pronounced his decision on this question, it was arranged that the question should be divided so as to take the vote separately on the right of each Member from the State of New Hampshire to a seat.

The Speaker[2] then decided that the interest of the Member upon whose right to a seat the vote was about to be taken was such as to disqualify him from voting on this question.

This decision was acquiesced in by the House, and each Member refrained from voting when the question was put on his own case; but each voted on the case of his colleagues. Thus, Mr. Hale did not vote on his own case, but he voted on the cases of Messrs. Burke, Reding, and Norris.

5959. A Senator having voted on a question affecting directly his title to his seat, the Senate ordered that the vote be not received in determining the question.—On March 23, 1866,[3] the Senate voted on a motion

[1] First session Twenty-eighth Congress, Journal, pp. 379–383; Globe, pp. 285, 286.

[2] John W. Jones, of Virginia, Speaker.

[3] First session Thirty-ninth Congress, Globe, pp. 1601, 1635–1648.

that John P. Stockton was duly elected and entitled to his seat as a Senator from the State of New Jersey, and there were yeas 21, nays 21. Thereupon Mr. Stockton, who had been seated on his prima facie right, asked that his name be called, and voted in the affirmative. A question was at once raised, but the President pro tempore (La Fayette S. Foster, of Connecticut) said that there was no rule of the Senate on the question, and that the Senator's name was on the roll. On March 26, Mr. Charles Sumner, of Massachusetts, raised a question as to this vote, contending that natural law, as set forth by such authorities as Hobart, Coke, and Holt, forbade a man acting as judge in his own case. The parliamentary law also forbade such action, and in England a vote given by a member somewhat interested in the question had been disallowed. On the other hand, it was contended by Reverdy Johnson, of Maryland, and others that the question was not personal to Mr. Stockton, but that the Constitution gave him a vote, and he was of right authorized to use it on a question affecting the representation of his State. The interest was not personal, but public. Mr. Sumner embodied his proposition, after consultation, in the following resolution:

Resolved, That the vote of Mr. Stockton be not received in determining the question of his seat in the Senate.

A motion to refer this to the Judiciary Committee was negatived, yeas 18, nays 22. The resolution was then agreed to without division.

The Senate, before adopting Mr. Sumner's resolution, had reconsidered the vote of the 23d, so this left the question free for a vote wherein Mr. Stockton should not be counted.

5960. On a motion to discharge a committee from consideration of a resolution affecting the seats of several Members, the Chair held that the Members concerned might vote.—On February 6, 1844,[1] Mr. George C. Dromgoole, of Virginia, as a question of privilege, moved that the Committee of the Whole House on the state of the Union be discharged from the consideration of the report of the Committee on Elections on the certificates of election or other credentials of the Members from the States of Georgia, New Hampshire, Missouri, and Mississippi, where the elections had not been held by districts as provided by law.

The yeas and nays were ordered on this motion, and after the roll had been called, but before the result had been announced, Mr. John Campbell, of South Carolina, raised a question of order that, under the provision of the rule, "No Member shall vote on any question in the event of which he is immediately and particularly interested," the Members from the said States were precluded from voting.

During the debate on the point of order the decision of Chairman Adams in the Twenty-sixth Congress was quoted.

The Speaker pro tempore[2] decided that the Members from the four States were entitled to vote on the pending question.

Mr. Robert C. Schenck, of Ohio, having appealed, the decision of the Chair was sustained, yeas 117, nays 61.[3]

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[1] First session Twenty-eighth Congress, Journal, pp. 353–356; Globe, pp. 240, 241.

[2] Samuel Beardsley, of New York, Speaker pro tempore.

[3] This report of the Committee on Elections found that the Members from the States in question were entitled to retain their seats.

5961. A Member against whom a resolution of censure was pending cast a decisive vote on an incidental question; but on the main question did not vote, except once in the negative, on the motion to lay the resolution on the table.—In 1842,[1] the House considered from January 24 to February 7 a proposition to censure Mr. John Quincy Adams, of Massachusetts, for presenting the petition of certain citizens of Massachusetts, who prayed for a dissolution of the Union. On January 25 Mr. Adams voted in the negative on a motion to lay the resolution of censure on the table; but on January 27,[2] on a question as to whether or not the House would consider the proposition, Mr. Adams did not vote. On the same day he did not vote on a proposition to lay the subject on the table.[3] On February 2,[4] Mr. Adams presented four resolutions calling on the Executive Departments for information which he declared to be necessary for his defense. A motion being made to lay these resolutions on the table, Mr. Adams voted in the negative; and on agreeing to the first resolution he voted in the affirmative. On this vote there were yeas, 97, nays 96; but although Mr. Adam's vote was decisive it does not seem to have been questioned. On the final vote on February 7,[5] whereby the whole subject was laid on the table, Mr. Adams did not vote.

5962. A Member who had been assaulted was excused from voting on a question relating to the punishment of his assailant.—On April 20, 1832,[6] during the trial of Samuel Houston at the bar of the House for assault on Mr. William Stanbery, a Member from Ohio, for words spoken in debate, a question arose as to certain testimony offered by Mr. Stanbery, and a vote by yeas and nays was taken.

Mr. Stanbery was, at his own request, excused from voting on this question, as well as on any question which might arise in the hearing of the trial of Samuel Houston.

5963. A Member of a State legislature having cast for himself a decisive vote for United States Senator, the Senate declined to hold the election illegal.

The Senate has entertained no doubt of its right to look behind the credentials given by a governor to the facts of the election.

On February 26, 1827,[7] the credentials of Ephraim Bateman, as Senator from New Jersey, were presented in the Senate, and on February 28 remonstrances of members of the legislature and citizens of that State against the legality of his election were presented. On December 3, 1827, Mr. Bateman appeared and took the oath. On May 6, 1828, the remonstrances were referred to a select committee, of which Mr. John MacP. Berrien, of Georgia, was chairman, and, on May 22, he submitted the following report:

That, by a reference to the proceedings of the legislature of New Jersey, assembled in joint meeting on the 9th November, 1826, of which a duly certified copy has been exhibited by the memorialists,

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[1] Second session Twenty-seventh Congress, Journal, p. 277; Globe, p. 169.

[2] Journal, pp. 281, 282; Globe, p. 180.

[3] Journal, p. 283.

[4] Journal, p. 302; Globe, p. 201.

[5] Journal, p. 314.

[6] First session Twenty-second Congress, Journal, p. 619.

[7] Election Cases, Senate document No. 11, special session Fifty-eighth Congress, p. 176.

it appears that an election for a Senator, to represent the said State of New Jersey in the Congress of the United States for six years from the 4th day of March then next ensuing, was on that day held; that Theodore Frelinghuysen, Ephraim Bateman, Thomas Chapman, and George K. Drake were put in nomination for the said appointment; that Ephraim Bateman was at that time a member of the said legislature of New Jersey, vice-president of the council, and chairman of the joint meeting; that the names of Thomas Chapman and George K. Drake were with leave respectively withdrawn; that the said Ephraim Bateman thereafter withdrew from the chair of the joint meeting, and at his instance William B. Ewing, esq., was called to the same; and, on motion, the same was confirmed by the joint meeting; that, after some discussion as to the manner of proceeding, the said Ephraim Bateman returned to the assembly room and resumed the chair; that the secretary was thereupon directed to call the joint meeting, which being done, the members voting viva voce, it appeared that there were for Theodore Frelinghuysen 28 votes and for Ephraim Bateman 29 votes, and that the said Ephraim Bateman voted for himself, and was accordingly declared to be duly appointed.

It moreover appears to the committee that in virtue of such election, and the commission of the governor of New Jersey founded thereon, the said Ephraim Bateman now holds his seat in the Senate of the United States.

The memorialists object to the validity of this election because the said Ephraim Bateman, being a member of the legislative council, vice-president of the State, and chairman of the joint meeting of the two houses of the legislature, permitted himself to be nominated as a candidate for the office of Senator in Congress of the United States; that he presided as chairman of the joint meeting during the said election; that, before the vote was taken, he made a motion that he should be excused from voting, because he was a candidate, and therefore interested; and, on the question being put on his said motion, voted that he should not be excused, the other members of the joint meeting being equally divided on the same; and that, on the vote for Senator for six years, the joint meeting, without the vote of the said Ephraim Bateman, being again equally divided, he, the said Ephraim Bateman, voted for himself.

The transcript of the proceedings of the legislature of New Jersey, which has been exhibited to the committee, does not show what motions were made and decided before the joint meeting proceeded to the election of a Senator; but it does show that on proceeding to that election, the votes of the joint meeting were for Theodore Frelinghuysen 28 and for Ephraim Bateman 29, and that Ephraim Bateman voted for himself. The question, therefore, which is presented to the consideration of the committee is whether this act invalidates the election.

On the preliminary point which is discussed in the argument forwarded in behalf of the memorialists, as well as in that submitted by the respondent, and which relates to the right of the Senate to look behind the commission granted by the governor, the committee can not permit themselves to entertain a doubt.

The Senate is empowered by the Constitution to judge of the elections, returns, and qualifications of its Members, and can not therefore be precluded by the commission emanating from the executive of a State from any inquiry which is necessary to the exercise of that judgment. If this were not so, the governor of a State, by an abuse of his trust, either from misapprehension or design, might assume to himself the appointing power in exclusion of the legislature.

The question whether the election of the respondent is invalidated by the fact that he voted for himself, and that without such vote he had not a majority of the votes of the joint meeting by which he was declared to be elected, is then forced upon the attention of the committee.

The following clauses of the Constitution of the United States relate to the manner of election:

"The Senate of the United States shall be composed of two Senators from each State, who shall be chosen by the legislature thereof."

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

The legislature of New Jersey has enacted the following provision:

"Senators of the United States on the part of this State shall be appointed by the council and general assembly, in joint meeting assembled, at the place where the legislature shall then sit."

It is manifest from the aforegoing clauses that Congress may prescribe the mode of electing Senators, and that in the absence of any provision by them it is competent to the legislatures of the several States to do so. It seems equally clear that each State must possess the power of defining by its organic law

the constituents of its own legislative department, of prescribing the qualifications of its members, and the limitations under which the trust confided to them shall be exercised; and that the interest of a member in any subject of legislative action may be declared to constitute, as to that subject, a ground of disqualification to the exercise of his legislative functions by such interested member. But no such provision exists. For aught that appears to the committee the respondent was a member of the legislature of New Jersey duly elected and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one. The committee have not considered the question of the propriety or delicacy of the act complained of by the memorialists as coming within the scope of the reference made to them by the Senate. Nor have they felt themselves at liberty to apply to this question any abstract principles of right or of that system of jurisprudence which, however its principles may have become intermingled with our statutory regulations or its rules of proceeding may be seen to operate in the forms which are in use in our judicial tribunals, has no intrinsic validity in those tribunals or in any other forum in the United States.

Contenting themselves with this brief view of the subject, it appears to the committee that the facts set forth in the memorial referred to them are not sufficient to invalidate the election of Ephraim Bateman as a Senator of the State of New Jersey in the Congress of the United States, under the election had in the joint meeting of the assembly of that State on the 9th day of November, 1826. They therefore recommend the following resolution:

Resolved, That the select committee raised on the remonstrance and petition of sundry citizens of the State of New Jersey be discharged from the further consideration of the same.

The resolution was agreed to by the Senate.

5964. The rule as to the Speaker's vote.

In all cases of a tie vote the question shall be lost.

Form and history of Rule I, section 6.

The provision of the House rules relating to the vote of the Speaker is section 6 of Rule 1:

He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot and in all cases of a tie vote the question shall be lost.

When the first rules were adopted on April 7, 1789,[1] the following was among them:

In all cases of ballot by the House, the Speaker shall vote; in other cases, he shall not vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal, and in case of such equal division, the question shall be lost.

On December 9, 1833,[2] Mr. John M. Patton, of Virginia, proposed a rule providing that "in all cases the Speaker shall vote," and urged it in an elaborate speech, saying that the existing rule was taken from Parliament, where conditions were different. The proposition was opposed on the ground that if the Speaker should vote he would or should have the right to explain his vote, and so would become too partisan. This view prevailed, and the proposition was defeated, 122 to 96. Again, in 1837,[3] during a revision of the rules, Mr. Patton urged his proposition again. After a discussion as to the proper time for the Speaker to vote, whether at the beginning or end of the roll call,[4] the amendment was defeated. On

[1] First session First Congress, Journal, p. 9.

[2] First session Twenty-third Congress, Journal, pp. 30, 77; Debates, pp. 2162, 2182.

[3] First session Twenty-fifth Congress, Globe, p. 35.

[4] The name of the Speaker is not printed on the roll. If he desires to vote, he directs the Clerk at the end of the roll call to call his name.

January 4, 1850, the attempt was successful, the words "he shall not vote" being changed to "he shall not be required to vote."[1] The adoption of this amendment was the occasion of an interesting debate. The opponents argued that the privilege would make the Speaker more of a partisan and less impartial. Ex-Speaker Robert C. Winthrop, of Massachusetts, argued on the other hand that the old rule was in violation of the Constitution. But if the Speaker was to vote on all occasions that he pleased, he should also have the right to speak whenever he wished, in order to explain his vote. It was the privilege and right of the Speaker, according to the precedents of the House of Commons, to give his reasons at the same time that he gave his casting vote. But it had been the uniform practice of the House of Commons, and the unchanged practice of this House since the formation of the Constitution, that the Speaker should keep his own seat and conduct the business of the House and not mingle in debate unless in committee. For one, he was in favor of maintaining that precedent.[2]

In the Twenty-sixth Congress the words "in all cases of ballot" were changed to "in all cases of election," but the old form was restored in the Thirty-second Congress.

In the revision of 1880[3] the committee reported the rule in a form requiring the Speaker to vote "in case of a tie, or where his vote, if given with the minority, would make a tie, or will make or prevent a two-thirds vote where such vote is required." On January 27, when the section was considered in Committee of the Whole, Mr. Joseph R. Hawley, of Connecticut, proposed, in order to make the verbiage less complicated, the present form. After extended debate the House adopted the amendment.[4] There seems to have been no intention of relieving the Speaker entirely from the necessity of voting, as has been the result, since under the parliamentary law a question is decided, even though the vote be a tie.[5]

5965. The Speaker's vote is recorded at the end of the roll call or after it.—The Journal records the vote of the Speaker, not among the yeas and nays of the roll call, but by adding the following after the record of the roll call:

The Speaker voted.

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[1] First session Thirty-first Congress, Globe, pp. 142–145.

[2] The Speakers have, in the recent history of the House, exercised sparingly the privilege of voting, confining it generally to important measures. On the resolution for the impeachment of President Johnson, on February 24, 1868, the Speaker (Mr. Colfax) voted, saying that he could not consent that his constituents should be silent on so grave a question (Cong. Globe, second session Fortieth Congress, p. 1400). In more recent Congresses it has been quite common for Speakers to vote, among the instances being the votes of the Speaker (Mr. Reed) on the passage of the tariff bill on March 31, 1897 (Cong. Record, first session Fifty-fifth Congress, p. 557), the passage of the bill appropriating $50,000,000 for the national defense on March 8, 1898, and the legislation relating to the war with Spain. Mr. Speaker Cannon voted on several occasions, as, on December 6, 1906, on the so-called pilotage bill.

[3] Congressional Record, second session Forty-sixth Congress, p. 204.

[4] Congressional Record, second session Forty-sixth Congress, pp. 551, 552.

[5] The Speaker never has two votes on the same roll call; that is, having voted as a Member of the body he may not vote again should the result be a tie. Speaker Cheeves has been represented as casting two votes in this way, but the Journal shows that he simply voted to make a tie, thus defeating the bill. (Journal, second session Thirteenth Congress, January 2, 1815; Annals of Congress, p. 1026.) In the choice of Presidential electors by the legislature of Delaware in 1824 a speaker voted twice; but he was given this right by express provisions of a statute. (Niles's Register, Nov. 27, 1824, Vol. XXVII, p. 195.)

An instance occurred on May 10, 1866,[1] when Mr. Speaker Colfax voted for the joint resolution proposing an amendment to the Constitution. The entry was:

The Speaker voted in the affirmative.

5966. Mr. Speaker Macon, following the example of Mr. Speaker Trumbull, exercised his constitutional right to vote, although the rule forbade.— On December 9, 1803,[2] the House resumed the consideration of the question which was depending the day before at the time of adjournment, "that the House do now agree to the resolution of the Senate, in the form of a concurrent resolution of the two Houses, proposing an amendment to the Constitution of the United States respecting future elections of a President and Vice-President," and, after further debate thereon, the said question was taken and resolved in the affirmative by yeas and nays, two-thirds of the Members present concurring in their agreement to the said resolution of the Senate, to wit, yeas 83, nays 42.

And the Speaker declared himself with the yeas.[3]

5967. On March 16, 1792,[4] the House was considering the following resolution:

Resolved, That Anthony Wayne was not duly elected a member of this House.

And the yeas and nays being ordered, every member voted in the affirmative, the roll call beginning—Jonathan Trumbull, Speaker,[5] Fisher Ames, John Baptist Ashe, etc.

5968. Under the early rule and practice the Speaker did not record his vote in cases where it would not be decisive, unless by permission of the House.—On December 22, 1823,[6] Mr. Speaker Clay asked and obtained of the House permission to record his vote on the bill making a grant of money to General Lafayette. The Speaker explained his wish to be recorded on the ground of "having been precluded, by the place he held, from the expression of his sentiments."

5969. The Speaker has voted when a correction on the day after the roll call has created a condition wherein his vote would be decisive.[7]

Where a Member votes and the Journal fails to include his name among the yeas and nays, he may demand a correction as a matter of right before the approval of the Journal.

On December 4, 1876,[8] the House, by a vote of 156 yeas to 78 nays—exactly the two-thirds vote required—suspended the rules and passed a resolution presented by Mr. Abram S. Hewitt, of New York, providing for special committees to investigate the recent Presidential election in Louisiana, Florida, and South Carolina.

On the following day, December 5, Mr. Nathaniel P. Banks, of Massachusetts, moved that the Journal and Record be corrected so as to include the name of Mr.

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[1] First session Thirty-ninth Congress, Journal, p. 687.

[2] Journal, first session Eighth Congress, p. 482; Annals, p. 775 (Gales & Seaton ed.), Nathaniel Macon, of North Carolina, Speaker.

[3] At this time the rule of the House forbade the Speaker voting unless the House should be "equally divided." (See sec. 5964 of this chapter.)

[4] First session Second Congress, Journal p. 537.

[5] In the present usage the Speaker votes at the end of the roll call instead of the beginning.

[6] Second session Eighteenth Congress, Journal, p. 74; Debates, p. 55.

[7] See also sections 6061, 6089 of this volume.

[8] Second session Forty-fourth Congress, Journal, p. 23; Record, p. 44.

Harris M. Plaisted, of Maine, in the negative on the adoption of the resolution submitted the previous day by Mr. Abram S. Hewitt.

The Speaker[1] decided that it was the right of the gentleman from Maine to have his vote recorded upon the said resolution upon the statement made by Mr. Plaisted that he did vote in the negative when his name was called.

Mr. Benoni S. Fuller, of Indiana, asked that the Journal and Record might be further corrected so as to show that he voted in the affirmative upon the aforesaid resolution, stating that he was present and so voted when his name was called.

The Speaker decided, as in the case of Mr. Plaisted, that the gentleman from Indiana was entitled to have his name recorded.

And therefore the names of Mr. Plaisted and Mr. Fuller were recorded, the first in the negative and the last-named Member in the affirmative, upon the adoption of the aforesaid resolution.

After the two votes had been recorded the Speaker said:

> The vote on the resolution offered by the gentleman from New York, Mr. Hewitt, as announced was, ayes 156, noes 78. There seems to have been an omission on each side. The votes omitted, if correctly recorded, would have made the vote 157 to 79. The Speaker was ready on yesterday to have voted, as was his constitutional right, if his vote would have produced a result either way; and if the Journal had shown the vote to be 157 to 79 he would have voted in the affirmative, still making the two thirds. * * * The Chair must insist upon his right to vote in the case that his vote would produce a result. * * * The Chair, then, exercises that right, and asks that his vote may be recorded in the affirmative.

5970. In case of error, whereof the correction leaves decisive effect to the Speaker's vote, he may exercise his right even though the result has been announced.

The Speaker's name is not on the voting roll and is not ordinarily called.

On July 19, 1882,[2] during the consideration of the contested-election case of Smalls *v.* Tillman, the question was taken on the resolution declaring that Tillman was not elected, etc., and the announcement was made that there were yeas 145, nays 1, not voting 145.

The vote was next taken on the resolution declaring that Smalls was elected, etc., and there were yeas 140, nays 5, not voting 145. The Speaker thereupon voted, making yeas 141, nays 5, a total of 146—just a quorum.

The Speaker[3] thereupon announced that on the vote preceding the last there had been an error in the tabulation and that in reality the result on the resolution declaring Tillman not elected had been yeas 144, nays 1, a total of 145—one less than a quorum.

The Speaker declared that he would vote, and did so, making the result 145 yeas and 1 nay—a quorum voting.

Mr. Gibson Atherton, of Ohio, made the point of order that the Speaker might not vote in such a manner.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Forty-seventh Congress, Journal, pp. 1675, 1676; Record, pp. 6234–6237, 6264–6267.

[3] J. Warren Keifer, of Ohio, Speaker.

After debate, the Speaker cited precedents in 1803, 1849, and under the speakership of Mr. Randall, to show that such a vote was proper. He further said:

It has never been the rule or practice for the Speaker's name to be called in the regular roll call, and therefore the Speaker does not respond to the roll call as other Members do, nor does he come within the provision of the rule which is applicable to other Members whose names are upon the roll.

Therefore the Speaker held that, while a Member might not have his vote recorded after the conclusion of the roll call, the Speaker might.

On the following day a resolution providing for an examination of this act of the Speaker was introduced and debated, but subsequently withdrawn after a full discussion of the matter.

5971. The Speaker having cast his vote in case of an apparent tie, asserted his right to withdraw it when the roll seemed to show that there was in fact no tie vote, but later caused it to be recorded to change the result.—On January 10, 1870,[1] the pending question was a motion to reconsider the vote whereby the main question was ordered on the joint resolution (H. Res. 106) declaring Virginia entitled to representation in Congress.

On this motion there appeared yeas 76, nays 76, whereupon the Speaker announced his vote in the negative, and declared that the House refused to reconsider the vote whereby the main question had been ordered.

After another roll call on a motion to adjourn, a question was raised as to the accuracy of the vote on the motion to reconsider, and on the statement of two Members as to their votes, it appeared that instead of standing 76 to 76, the vote really was 77 yeas to 76 nays. The Speaker thereupon withdrew his vote, and declared that the vote had stood 77 to 76, and that the motion to reconsider was disagreed to.

Objection was made that the Speaker might not thus withdraw his vote, but that, it having been given in, it stood like the vote of a Member on the floor.

The Speaker[2] said:

The duty of voting in the decision of tie votes is one of the most unpleasant that is imposed on the Chair. * * * The Chair has the same right as any other Member of the House to vote at any time. But he follows the usage and etiquette of his position, which he desires not to violate, when he abstains from voting as well as taking a part on the one side or the other in debates upon questions with reference to the discussion of which he ought to maintain a position of impartiality. * * * The Chair voted under a certain condition of circumstances, but that condition of circumstances having changed, the Chair now withdraws his vote. * * * No other Member of the House is circumstanced as the Chair is in respect to voting. The Chair is uniformly excused from voting. The Chair has a right to vote if he chooses, or not to vote. The Chair, in a given state of circumstances, voted. That given state of circumstances has been corrected and entirely changed under the privileges of the House, and the Chair, therefore, does not vote. If the question were on the final passage of the resolution the Chair would have doubts as to the propriety of his course, but as it merely remits it to the decision of the House upon a point already once decided and now reconsidered by a majority of one, the Chair assumes and decides that he has a right to withdraw his vote under the circumstances.

So, under this state of facts, the vote was reconsidered, and the question recurred on ordering the previous question, and being taken by yeas and nays, there appeared, yeas 66, nays 80. So the previous question was not ordered.

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[1] Second session Forty-first Congress, Journal, p. 112; Globe, pp. 339, 340, 361, 362.

[2] James G. Blaine, of Maine, Speaker.

On January 11 the Speaker announced that when the yeas and nays; on the first vote to reconsider were transferred to the Journal, it was found, in fact, that, with the Speaker's vote as given in, the yeas were 77 and the nays 77, instead of yeas 76 and nays 77, as announced at the time. Therefore, the vote being a tie, the motion to reconsider was disagreed to. The Speaker stated that in accordance with the practice of the House, all proceedings "subsequent to the erroneous announcement of a vote" were treated as a nullity, and the Journal had accordingly been made up to show the Speaker as voting and the vote as 77 yeas and 77 nays and the motion to reconsider disagreed to.

5972. The right of the Vice-President to give a casting vote extends to cases arising in the election of officers of the Senate.—On January 9, 1850,[1] in the Senate, Vice-President Millard Fillmore raised a question whether, under his constitutional power to give a casting vote,[2] he might vote in a case where there was a tie in the election of an officer of the Senate. Mr. Fillmore asked the opinion of the Senate. During the debate, Mr. John C. Calhoun, of South Carolina, recalled that several times when he was Vice-President he cast his vote on Executive nominations. The opinion of the Senate seeming to be in favor of the power of the Vice-President to vote in the case before them, Mr. Fillmore cast his vote for one of the candidates.

5973. On December 14, 1829,[3] the Senate proceeded to the election of a Chaplain, and the whole number of ballots collected was 42, of which the Reverend Henry Van Dyke Johns had 21, and the Reverend John P. Durbin had 21.

The vote of the Vice-President[4] was then taken, which decided the election in favor of the Reverend Henry Van Dyke Johns.[5]

5974. On January 17, 1877,[6] the Senate considered but disagreed to a rule providing that the Vice-President should vote when the Senate was equally divided. It was objected that this was making a requirement beyond that of the Constitution, and that the Senate would have no power to enforce it.

5975. Instance wherein the Vice-President cast a deciding vote on questions relating to the organization of the Senate.—On March 18, 1881,[7] the Senate was considering a resolution proposed by Mr. George H. Pendleton, of Ohio, providing committee assignments of Senators.

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[1] First session Thirty-first Congress, Globe, p. 128.

[2] Section 3 of Article I of the Constitution of the United States provides: "The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided." Many of the States have in their constitutions identical or similar provisions.

[3] First session Twenty-first Congress, Senate Journal, p. 28.

[4] John C. Calhoun, of South Carolina, Vice-President.

[5] At this session also the Senate was equally divided on May 10, 1830 (Senate Journal, p. 457) over the question, "Will the Senate advise and consent to the appointment of Amos Kendall?" [as Fourth Auditor of the Treasury], and the Vice-President voted in the affirmative. Again, on May 28 (Senate Journal, p. 469), he again voted in the affirmative on the confirmation of M. M. Noah.

[6] Second session Forty-fourth Congress, Record, p. 692.

[7] Special session of Senate, Forty-seventh Congress, Record, p. 33.

Mr. Henry B. Anthony, of Rhode Island, moved to postpone indefinitely the resolution; and the Vice-President [1] announced:

The yeas are 37, and the nays are 37. The Senate being equally divided, the Chair votes "yea."

Mr. Eli Saulsbury, of Delaware, without raising a question of order, expressed the opinion that the Constitution did not confer on the Vice-President the right to vote on a question of this character.

Mr. John A. Logan, of Illinois, replied, citing a precedent of the Senate, made on December 15,[2] 1829, when Vice-President John C. Calhoun, of South Carolina, voted in the case of a tie on the election of Chaplain.

Mr. Anthony then offered a resolution providing a plan of committee assignments, and on the vote the yeas were 37, nays 37. Thereupon the Vice-President voted in the affirmative, and the resolution was agreed to.

5976. The Vice-President votes on all questions wherein the Senate is equally divided, even on a question relating to the right of a Senator to his seat.—On November 26, 1877,[3] in the Senate, a motion was made that the Senate proceed to the consideration of executive business, and there appeared, yeas 29, nays 29. Thereupon the Vice-President [4] voted "aye" and the motion was agreed to.

5977. On November 28, 1877,[5] the Senate was considering the following:

Resolved, That William Pitt Kellogg is, upon the merits of the case, lawfully entitled to a seat in the Senate of the United States, etc.

To this Mr. Allen G. Thurman, of Ohio, offered an amendment to strike out all after the word "resolved" and insert the following:

That M. C. Butler be now sworn as a Senator from the State of South Carolina.

On agreeing to this amendment there appeared, yeas 30, nays 30.

The Vice-President [4] thereupon said:

The vote of the Senate being equally divided, the Chair votes in the negative.

Mr. Thurman challenged the right of the Vice-President to vote on a question affecting the right of a Senator to his seat. Debate arose, during which reference was made to the precedent of January 9, 1850, when the Vice-President voted on the election of an officer of the Senate.

Mr. Thurman finally withdrew his question of order.

The Vice-President said:

The Chair * * * has very carefully considered the question raised by the Senator from Ohio, and he has no doubt of his right to vote in all cases in which the Senate is equally divided * * * as at present advised, he will, on occasion, exercise the right in his discretion.

5978. The House chose the location of the World's Columbian Exposition by a viva voce vote.—The selection of a place for holding the World's

[1] Chester A. Arthur, of New York, Vice-President.

[2] This election occurred December 14, 1829. (See section 5973 of this chapter.)

[3] First session Forty-fifth Congress, Record, p. 650.

[4] William A. Wheeler, of New York, Vice-President.

[5] First session Forty-fifth Congress, Record, pp. 737–740.

Fair of 1893 was made by the House voting viva voce in accordance with a special order prescribing the method of selection.[1]

5979. Two independent amendments may be voted on together, only by unanimous consent.—On January 18, 1905,[2] the House was considering the fourth and fifth articles impeaching Judge Charles Swayne, when Mr. Marlin E. Olmsted, of Pennsylvania, proposed two amendments, one to the fourth and the other to the fifth article.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if the vote might be taken on both amendments at the same time.

The Speaker[3] said:

> It can be done by unanimous consent; not otherwise.

5980. Where a vote was taken by States, a question standing 5 to 3, with three States divided, was held to be carried.[4]—On July 7, 1787,[5] in the convention to frame the Federal Constitution, the question was on agreeing to the clause relating to the power of originating revenue bills, when there appeared, on a vote by States, 5 yeas, 3 nays, and three States divided.

And a question moved and seconded, whether the vote so standing was determined in the affirmative, it was decided, as follows, that it was—yeas 9, nays 2. The two nays were New York and Virginia. The first had been divided, and the second had voted "nay."

5981. Pairs, which are announced but once during the legislative day, are announced after the completion of a roll call, and are published in the Congressional Record.

Growth of the practice of pairing in the House.

Present form and history of section 2 of Rule VIII.

Section 2 of Rule VIII provides:

> Pairs shall be announced by the Clerk, after the completion of the second roll call, from a written list furnished him and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting: *Provided* pairs shall be announced but once during the same legislative day.

Pairs, although receiving recognition in the rules of the House, are essentially a matter of private arrangement between Members. Originally the rules did not recognize such an arrangement, although it seems to have existed for many years, On May 17, 1824,[6] Mr. Henry W. Dwight, of Massachusetts, stated that he wished to be excused from voting on the pending bill, as he had arranged with a Virginia gentleman who was, on this question, opposed to him, that they should both leave town that morning. The Virginia Member had gone, but he had been detained. As a matter of keeping faith he wished to be excused from voting. The House voted to excuse him. On March 23, 1840,[7] Mr. John Quincy Adams, of Massa-

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[1] First session Fifty-first Congress, Journal, p. 266.

[2] Third session Fifty-eighth Congress, Record, p. 1056.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] See, however, footnote to section 6008 of this volume.

[5] Elliot's Debates, first edition, vol. 4, p. 89.

[6] First session Eighteenth Congress, Annals, p. 2633.

[7] First session Twenty-sixth Congress, Journal, p. 652.

chusetts, moved a resolution declaring that the practice of pairing off, "first openly avowed at the present session of Congress," involved a violation of the Constitution and of a rule of the House. The practice continued, and on April 19, 1871,[1] Mr. Speaker Blaine spoke of the announcement of pairs at the time of the roll call as an "indulgence," a practice that had "grown up without rule," and was tolerated only by unanimous consent. At the time of the revision of 1880 the Committee on Rules for the first time gave it recognition by proposing this rule:

Pairs shall be announced by the Clerk, after the completion of the second roll call, from a list furnished him by Members, which list shall be published as a part of the proceedings immediately following the names of those not voting.

When this was debated on January 29, 1880,[2] Mr. Joseph C. S. Blackburn, of Kentucky, proposed the amendment providing for the publication of the pairs in the Record, the object being to prevent cumbering the Journal. The provision that the Member should sign the statement of the pair was suggested by Mr. George D. Robinson, of Massachusetts, and the prohibition of more than one announcement of a pair on the same legislative day was added on motion of Mr. Mark H. Dunnell, of Minnesota. Thus the rule was brought to its present form.

On April 26, 1890,[3] a resolution declaring all pairs off was introduced, but withdrawn after a point of order had been made that the rules took no cognizance of pairs except to permit their announcement.

On June 2, 1888,[4] a question arose as to whether or not paired Members might vote in Committee of the Whole, and the Chairman,[5] held that it was a question for the Members themselves to determine individually.

Before the rule in regard to the announcing of pairs, Members used sometimes to rise and announce to the House that they had paired.[6]

5982. A suggestion being made that a pair had been disregarded, the Speaker held that this was not a question for the House.—On March 25, 1902,[7] the yeas and nays had been taken on the contested-election case of Moss *v.* Rhea, of Kentucky, when Mr. James A. Tawney, of Minnesota, said:

I notice in the announcement of the pairs a pair between Mr. Overstreet and Mr. Hanbury, of New York. My recollection is that Mr. Hanbury—I do not know whether he is here—has voted.

The Speaker[8] said:

The gentleman is recorded as voting in the affirmative. The House can not decide that question. It is a matter of honor for any gentleman as to whether he will observe his pair. The Chair knows of no law governing the matter.

5983. On December 1, 1856,[9] Mr. Speaker Banks declared "a pair-off is not binding upon the House."

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[1] First session Forty-second Congress, Globe, p. 801.

[2] Second session Forty-sixth Congress, Record, pp. 604, 605.

[3] First session Fifty-first Congress, Journal, pp. 528, 529; Record, pp. 3909, 3910.

[4] First session Fiftieth Congress, Record, p. 4859.

[6] William M. Springer, of Illinois, Chairman.

[7] See instance April 18, 1860, first session Thirty-sixth Congress, Globe, p. 1780.

[7] First session Fifty-seventh Congress, Record, pp. 3255, 3256.

[8] David B. Henderson, of Iowa, Speaker.

[9] Third session Thirty-fourth Congress, Globe, p. 7.

5984. Pairs are not announced in Committee of the Whole.—On April 20, 1900,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the vote was being taken by tellers on an appeal from the decision of the Chair on a point of order.

Before the announcement of the vote Mr. Charles K. Wheeler, of Kentucky, requested that pairs be announced.

The Chairman[2] said:

The Chair does not think pairs should be announced in Committee of the Whole. It is an unprecedented thing; and the Chair does not think it can be done.

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[1] First session Fifty-sixth Congress, Record, p. 4497.

[2] Sereno E. Payne, of New York, Chairman.